MOTOR DEALER GUIDELINES

FIRST EDITION

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Province of British Columbia
Ministry of Consumer and Corporate Affairs

These guidelines have been prepared for your convenience and information by the B.C. Ministry of Consumer and Corporate Affairs.

The Ministry gratefully acknowledges the input from members of the motor dealer, advertising and consumer communities in determining the format and content of this first edition.

The guidelines do not have the force of law. They are simply an attempt, in everyday language, to assist motor dealers to be aware of the impact of British Columbia legislation.

Province of
British Columbia

Ministry of
Consumer and
Corporate Affairs

Parliament Buildings
Victoria
British Columbia
V8V 1X4

June, 1977

Dear British Columbia Motor Dealers:

This first edition of the Guidelines is meant to be helpful in relating your selling and advertising practices to the several statutes administered by this Ministry touching upon motor vehicle transactions with consumers in British Columbia.

The Guidelines are a first effort to help motor dealers, by the use of examples, to be aware of B.C. legislation, particularly the Trade Practices Act, in the day-to-day selling of motor vehicles.

I want to emphasize that the Guidelines do not have the force of law. Whether a particular practice is deceptive or misleading under the Trade Practices Act is ultimately a decision for our Courts to make.

I hope that you will find the Guidelines to be of assistance in your work. A considerable amount of co-operation has been given by the business and consumer communities in British Columbia towards their preparation. This first edition certainly will be the subject of change and updating as our experience grows and I look forward to your continued assistance in the future.

Sincerely,

K. Rafe Mair
Minister

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INTRODUCTION

Motor Dealers are among the many business people who ask questions about the laws for which this Ministry is responsible.

In response to these questions and as a service to this industry, the Ministry presents its first set of *Motor Dealer Guidelines*.

We want to make it clear at the outset that these Guidelines are not law. Any final interpretation of the legislation in a given case is for a court to decide.

While the advice we give is patterned on laws designed to protect consumers, we feel that if the advice is followed by all, business can benefit from consistent standards of conduct and fair competition among all dealers in the market.

It's true that responsible dealers will benefit the most. They are the ones who have adopted high standards of conduct voluntarily. For them, laws such as the Trade Practices Act, the Consumer Protection Act and the Motor Vehicle Act pose few problems. In fact, consumer laws protect these reputable businesses from firms that would be willing to use unfair business practices were it not for the presence of regulations.

This copy of the Guidelines is a first edition. They will be subject to change as experience is gained through use.

The Guidelines are organized to approximate the natural sequence of events in the sale of a motor vehicle - Advertising, Presentation, Closer, Contracts and Warranty.

However, under the Trade Practices Act a deceptive act can include any type of representation made *before*, *during* or *after* the transaction.

While, for example, the Guidelines discuss *Advertising* (in print or broadcast media) separately from *The Presentation* (oral statements by a salesman) *there is no such distinction* made by the Trade Practices Act which says that a deceptive act or practice can include *any oral, written, visual, descriptive or other representation.*

Finally, here are some of the important terms used in these Guidelines:

Consumer, customer - the Guidelines use these two terms synonymously to mean a "consumer" as defined in the Trade Practices Act. A consumer is an individual who participates in a consumer transaction for purposes that are mainly personal, family or household. A person who buys a car or pick-up truck for use in his business *is not* a consumer by this definition.

Consumer transaction - includes the provision of goods or services by a dealer to a consumer, and the extension of credit (other than credit extended solely on the security of real estate), but not securities or insurance.

Dealer - a dealer as defined in the Motor Vehicle Act (or succeeding Acts). In the terminology used by the Trade Practices Act, a dealer or a sales person employed by a dealer is also a "supplier."

Supplier - someone who, in the course of business, provides goods or services to a consumer, and includes those who solicit, offer, advertise or promote the supply of goods or services or otherwise participate in a consumer transaction.

Questions about these Guidelines in particular, or consumer legislation in general, should be directed to:

Trade Liaison Division
Ministry of Consumer
and Corporate Affairs
838 Fort Street
Victoria, B.C.
V8W 1H8
(387-6831)

ADVERTISING

General

"Advertising" means almost any type of solicitation by a car dealer that urges consumers to buy merchandise or use services. This includes advertisements in newspapers and magazines, and on radio and TV. It also includes any claims made in a showroom display or in a showroom window.

Motor dealers and employees of motor dealers should have a working knowledge of the various laws which govern advertising. Some of the important Provincial Statues are:

The Trade Practices Act;
The Consumer Protection Act;
The Motor Vehicle Act;
The Motor Dealers Licencing Act.

This first section will provide interpretations and examples of how these Acts affect motor dealers' advertising practices.

The *General Advertising Guidelines* published by this Department cover a wide range of advertising practices and should be used to complement these Motor Dealer Guidelines.

If you want to know about an advertising practice that is not mentioned here, you should check the *General Advertising Guidelines*.

Price Advertising

1. Price

"Price" is defined by the Trade Practices Act as the *total obligation payable by a consumer under a consumer transaction*. Based on this definition, advertised prices should include the cost of all non-optional components (such as local freight and dealer preparation) that are known to the advertiser at the time the advertisement is placed.

With respect to price advertising, it is important to note the distinction between a "national advertisement" and a "dealer advertisement."

(a) National Advertisement

In our view, a national advertisement is one in which *no local dealers are named*. Even if the advertisement was placed by a manufacturer or importer, if local dealers are named in the advertisement they are likely to gain from the representation and the advertisement loses its "national" identity.

It is quite acceptable for a national advertisement to quote a suggested list price as a way of giving the approximate cost for the advertised automobile. Where suggested list prices are given, any missing elements such as local freight and dealer preparation must be identified.

Acceptable National Advertisement

'76 CAM SEDAN

Suggested List
$4195*

*Freight and Dealer Preparation Extra

When suggested list prices are given, there should be no representation that cars are available from specific dealers at the advertised prices (to do this may offend federal competition legislation). Suggested list prices must not be used in a "dealer advertisement."

(b) Dealer Advertisement

Any advertisement in which specific dealers are named is a "dealer advertisement." From our point of view, the price quoted in a dealer advertisement should be the full price at which the vehicle is available at that dealership. Such a price should include all

non-discretionary charges such as local freight and dealer preparation.

It is definitely misleading for a dealer to advertise a car at a specific price if the car is not available at that price.

Misleading Dealer Ad

'76 CAM SEDAN

$4195*

*freight and dealer preparation extra

Correct Dealer Ad

'76 CAM SEDAN

$4475

Total Price

Sales tax, licence and insurance are *not* considered to be part of the selling price but sales tax may be part of the total price in a credit transaction.

If a car is advertised for sale under a deferred payment plan, the cost of borrowing forms part of the total obligation payable and the "price" as defined by the Trade Practices Act (see "Credit Terms" for an example).

2. Trade-In Allowances

Trade-in allowances are always a matter for negotiation between dealer and customer, and depend upon the condition or age of the vehicle. For this reason, specific trade-in allowances should not be advertised.

3. Dealer Cost

Advertisements frequently refer to "dealer cost plus $200," "$149 over invoice price" or similar expressions. Where such terms are used to indicate a selling price based on dealer's cost, this "cost" should be the cost of that vehicle to the dealer *minus any discounts, volume rebates or other reductions from the cost* of placing that vehicle in stock. Cost should not include any allocation for overhead or operating expenses.

Advertising of this type should always include the total price of the vehicle with equal prominence.

Credit Terms

1. Alternatives

There are essentially two alternatives open to a dealer who wishes to advertise credit terms:

(a) The advertisement can simply say something like "financing available," "monthly payments can be arranged" or "credit available at xx% annual interest." When a percentage rate is used, the cost of borrowing must be stated in the form required by the Consumer Protection Act.

For example . . .

1977 ABC WAGON

$5488

financing available at
13.5% annual interest

(b) If the dealer wishes to give more credit information in his advertisement, he must give *all of the following* as required by the Consumer Protection Act and the Trade Practices Act:

i. the cash price of the car including all non-optional components;
ii. down payment, if any;

iii. amount of each installment;
iv. the number of installments required;
v. the total price including the cost of borrowing. (This should include sales tax when sales tax is a component of the total funds borrowed upon which the "cost of borrowing" is calculated.)

The Trade Practices Act requires that, where any of the first three components are given in an advertisement (being the "price of a unit of a consumer transaction"), the advertisement must be constructed in such a way that the fifth element, the total price, is given at least equal prominence (in a print advertisement this means at least the same size and weight of type).

Misleading

1976 ABC

Cash Price
$4625
or, $700 down
$95 per month
for 60 months

Not Misleading

1976 ABC

Cash Price
$4625
or, $700 down
$95 per month
for 60 months
Total Price
$6400
including sales tax

The "equal prominence" requirement applies to all varieties of advertising, including for example, window signs, radio and television advertising, etc.

2. "No Credit Rejects," "Easy Credit"

A large proportion of car purchases involve the use of credit. However, responsible credit grantors always find it necessary to reject some applicants. It is misleading to imply that credit is available to everyone who applies.

3. "No Interest Charge"

Some car dealers sell cars on deferred payment plans claiming to charge no interest. The justification for the "no interest charge" claim may be that they allow the customer to pay the purchase price by installments over a period of time without making any specific interest charge.

In the view of this Ministry, whenever cars are sold on a deferred payment plan, there is a cost to the lender or dealer which must be recovered as "interest." This is the case whether the interest is clearly disclosed as "cost of borrowing" or simply buried in the asking price. For this reason, the claim "no interest charge" or similar expressions should not be used.

4. "On Approved Credit"

Whenever credit terms are advertised, the qualifying phrase "on approved credit" or a similar expression, should be included. In our experience, many consumers do not recognize the abbreviation "O.A.C.". For this reason, "on approved credit" should be written out in full.

Consumer Lease Plans

The Trade Practices Act requires that where the price of any unit of a transaction is shown in an advertisement, the total price of the transaction must be given with at least equal prominence.

When a consumer lease plan is on a month-to-month basis, with no minimum term, one month's payment is the total price or obligation involved. Such a plan may be advertised showing only the price of the monthly payment.

If a lease plan has a minimum required term, one month's payment is not the total price or obligation. It is the price of a unit. If a monthly payment is given in an advertisement, the total price based on the minimum term must also be shown. This total price will vary according to the terms of the specific lease agreement.

Misleading

LEASE A 1977 SEDAN

only $95 per month

Not Misleading

LEASE A 1977 SEDAN

only $95 per month

Total Price over the 12-month minimum term only $1140

Any references to deductibility of leasing costs for income tax purposes should clearly disclose that such deductibility relates only to the business use of leased vehicles.

Consumer Lease-to-Purchase Plans

When advertising "lease-to-purchase" plans, the same disclosure requirements apply. If the price of a monthly payment is given, the total price of the transaction must also be shown. This total price will vary according to the contract that must be signed by the consumer.

For example, if the lease-to-purchase plan is a 36-month plan with an option to purchase, the total price should be based on the minimum required 36-month term. Advertising of this type must clearly disclose the fact that additional payment or payments must be made to exercise the purchase option.

Misleading

Lease-to-Purchase

1977 XYZ

only $109 per month for 36 months

Not Misleading

Lease-to-Purchase

1977 XYZ

Lease for 36 months at $109 per month (total payments of $3924). At the end of 36 months, either return the car to us or purchase for an additional $3200, plus B.C. sales tax

Savings Claims

Under the Trade Practices Act, it is misleading to claim that a price benefit exists if it does not. When a car is advertised at a "sale" price, there must be a true saving.

When price comparisons are used as the basis for savings claims, the prices compared must be for identical cars (identical as to model, year, equipped with the same options with the same number of miles, etc.).

Correct Example

Clearance of 1976 models of

1976 ZIP WAGON

(6 only left in stock)

Sold regularly at $4795
Now only $4295
SAVE $500

Comparisons between cars that are not identical (for example, between a new car and a demonstrator), are acceptable. However, "save" or similar expressions *should not be used.*

1. New - Demonstrator Price Comparisons

When vehicles are not identical, it is acceptable to "compare" prices as long as:

— no explicit savings claims are made;
— the differences between the vehicles are clearly disclosed.

Misleading

1976 ABC

demonstrator
air
conditioned,
p.s., p.b.

Price New - $7500
Now Only - $6500
SAVE - $1000

Not Misleading

1976 ABC

demonstrator
air
conditioned,
p.s., p.b.

!! COMPARE !!
PRICE NEW - $7500
NOW ONLY - $6500

In the misleading example above, it is clear that the two articles being compared are not the same, i.e. "new" vs. "demonstrator." But, *because the two vehicles being compared are not the same, it is incorrect to indicate a saving.* The correct advertisement provides the information and invites the consumer to "compare."

2. New - Used Price Comparisons

For late-model cars, it may also be appropriate to compare the used price with the new price. The same rules apply:

— The advertisement should invite price comparisons but not make specific savings claims;

— The difference between the vehicles must be clearly disclosed.

Misleading

SAVE $800

on

1976 XYZ

company car

like-new, only 5,000 miles driven by our service manager

Not Misleading

COMPARE!
1976 XYZ
like-new, only 5,000 miles driven by our service manager
PRICE WHEN NEW
$7295
NOW ONLY
$6495

3. Different Model Years

It is misleading to base a savings claim on a price difference between automobiles of different model years.

Misleading

SAVE $500
The 1977 XYZ
Sport Coupe
Will be $500 more than the 1976 model
BUY NOW WHILE 1976 STOCK LASTS

Not Misleading

BUY NOW WHILE STOCK LASTS
1976 XYZ
Sport Coupes
still only
$6200
1977 Models will be $6700

4. Suggested List Prices

In advertisements for new vehicles, "suggested list price" or "manufacturers' list prices" should not be used except in an advertisement placed by a manufacturer or importer, and where no local dealers are named.

For example, a 1977 ZIP coupe may have a suggested list price of $4795. Due to competition in the local

market, the usual selling price of this vehicle may be only $4595. The following would be examples of incorrect and correct advertisements:

Misleading

1977 ZIP coupe

Suggested list price $4795

Our sale price $4295

SAVE $500

Not Misleading

1977 ZIP coupe

Our low regular price $4595

Sale price $4295

SAVE $300

5. Used Vehicles

The selling prices of used vehicles vary so much that when a price is reduced it is likely due to market conditions rather than a reduction from a regular selling price. Sale prices for used vehicles should not claim or imply a savings or discount. Expressions such as "we paid in trade $. . ." should not be used.

Misleading

1970 HUP

Regular Price $3000

Sale Price $2500

SAVE $500

Not Misleading

1970 HUP

Formerly asking $3000

Now only $2500

6. Wholesale

The term "wholesale" should not be used in connection with the retail offering of new or used cars.

7. Options at No Cost

Optional equipment is often offered at no additional cost or for a nominal cost with the purchase of a vehicle.

For example . . .

No additional charge for **AM radios** with every new car purchased before October 31st!

or

Power steering **99c** with the purchase of a **1976 Model NOP**

Base Price **$5200.00**

Price with power steering **$5200.99**

This practice is acceptable. But, the additional item must really be something that is not standard equipment, and the cost must not be built into the price of the car.

Options offered at no additional charge should never be described as "free" since they are only available with the purchase of a car.

The following principles should be noted when combination offers are advertised:

1. The vehicle should have a regular and not a fluctuating price;
2. Continuous offers of goods available at no extra cost, or for nominal cost should not be made since the value of the "extra" goods may become built into the price of the vehicle;
3. The quality or price of the main purchase should not be changed during the period of the offer.

Fuel Economy Advertising For New Automobiles

In the interest of providing a standard which will permit meaningful comparisons, the B.C. Ministry of Consumer and Corporate Affairs endorses the test procedures approved by Transport Canada.

The following rules should be observed for fuel economy claims made in advertising:

1. *All* fuel economy claims should be accompanied by Transport Canada test results.

Misleading

1977 XYZ Coupe

First in Fuel Economy!

Not Misleading

1977 XYZ Coupe

First in Fuel Economy!

56 mpg highway*
44 mpg city*
*mileage based . . .

2. Disclosure should always be made of the fact that the actual mileage obtained by the consumer will be different depending upon how and where the consumer drives, etc. Such disclosure will ensure that consumers are not led to believe that they will be able to duplicate the very mileage figures given in an advertisement.

Correct Example

1976 BEEP
Performance *and* Economy
26 mpg combined*

***combined, sales weighted mileage**

based on Transport Canada approved test methods. Your mileage will vary depending on the type of driving you do, your driving habits, your car's condition and optional equipment.

3. Either "sales weighted" figures, or results for specific auto models may be used. However, it must be clear *which of these types* of results are shown. When results refer to a specific model of the automobile advertised, the model must be clearly identified in terms of engine size, transmission type, fuel system, etc.

Correct Example

1976 BEEP 300 cu. in.,
30 mpg highway*
26 mpg city*

*mileage based on Transport Canada approved test methods for the 300 cu. in. 2-door sedan with 4-speed transmission. The actual mileage you get **will** vary depending on the type of driving you do, your driving habits, your car's condition and optional equipment.

4. Highway mileage results must not be shown without also showing the city mileage results with at least equal prominence.

Misleading

1977 XYZ Coupe

Great Fuel Economy!

56 mpg highway*
*mileage based . . .

Not Misleading

1977 XYZ Coupe

Great fuel economy!

56 mpg highway*
44 mpg city*
*mileage based . . .

"Extended" Warranties

There are two types of warranty commonly available with automobiles: the manufacturer's warranty that comes with a new car, and so-called "extended" warranties which may "extend" the warranty of a new car or provide some warranty protection with a used car. The scope of coverage of these "extended" warranty plans is typically less, to some degree, than that available on a new car through the manufacturer. For example, some plans do not cover labour costs. Furthermore, all extended warranties involve some extra cost whether it is paid directly by the consumer or included in the purchase of certain specified products or services.

Since there are differences between extended warranties and manufacturer's warranties, we are concerned with advertising that could lead the average consumer to believe that such plans are merely straightforward extensions of the manufacturer's initial warranty.

Advertising can simply indicate that "a warranty applies" or that "extended warranty coverage is available." However, advertising which states "36,000 mile, 3 year extended warranty" could be construed as deceptive if certain other facts are not disclosed.

Where *any* details of an extended warranty are given in an advertisement, *all* of the following should be given:

1. The identity of the warrantor - e.g. the auto dealer, insurance company, etc.

2. The coverage provided should be outlined and the duration of this coverage. This is important wherever the coverage differs significantly from that given by the manufacturer's warranty.

3. Extended warranty plans are considered primarily to be contracts for services and representations to any other effect should not be made.

4. Whether there is a cost to the consumer for such plans, or whether this cost is included in the purchase price of the automobile.

or . . . If the plan requires that the consumer purchase specific products or services (outside of those periodic services as required by the manufacturer during the initial warranty period), these should be disclosed.

Correct Examples

HUB MOTORS LTD.

extended service protection available on all late model used cars

or

ABC MOTORS LTD.

50/50 SERVICE PROTECTION

Included with all used cars, at no additional cost. Hub Motors will pay half the bill for *any repairs* carried out within 12 months.

or

NUP MOTORS LTD.

Canadian Insurance Company
12 month - 12,000 miles
extended power train repair protection
available at a reasonable cost
on all used cars.

or

CAM MOTORS LTD.

XYZ Oil Company
3 year - 36,000 miles
extended power train repair agreement available
conditional upon the use of
XYZ Oil Company products.

Availability

Vehicles advertised should be available for sale at the price advertised. This applies to new as well as used vehicles.

For example, a dealer might advertise "1976 Hupmobiles - from $5400." This might be the actual base price for that vehicle, but if the dealer only has Hupmobiles with power steering and automatic transmissions starting at $5700, it would be misleading to advertise a price of $5400.

If an advertised model is not immediately available, but for example, must be ordered from the factory, this limitation should be stated in the advertisement.

Dealer Identification

Advertising placed by a dealer should be done in such a way that it could not be confused with that placed by a private car owner.

All dealer advertising must contain:

1. name of dealer
2. the word Dealer, followed by the appropriate dealer licence number.

Illustrations

Illustrations should match the vehicle described in the advertisement. It may be misleading to use the phrase "not exactly as illustrated."

PRESENTATION

General

Under the Trade Practices Act, "parol" or "word of mouth" evidence is admissible in court as long as it relates "to the understanding of the parties . . . or to a particular term or provision of the consumer transaction."

This means that the dealers' responsibilities are not limited to statements written into a contract. They are also responsible for verbal promises or representations made in the course of a presentation. The presentation really counts.

In addition, what the salesman *doesn't* say about a car may in some cases be as important as what he *does* say. Section 2(3) (r) of the Trade Practices Act says that it may be deceptive or misleading either:

—to use an exaggeration, innuendo, or ambiguity as to a material fact

—or, *fail to state a material fact.*

"What is a material fact?"

As with any other point of law, the final decision is a matter for the courts. A suggested answer to this question is — "A material fact is something which might have an important effect on a consumer's buying decision." "Buying decision" includes not only whether to buy or not to buy, but the price the consumer would be willing to pay taking the age and condition of the vehicle into consideration.

For example, new cars often incur some body damage in transit and are repaired by the distributor or dealer.

In our view, a car buyer can reasonably expect a new car to be close to "perfect." This means that repairs carried out to factory new car specifications need not be disclosed. This would include replacement of damaged parts with new ones, or body work of a cosmetic nature involving sanding and painting.

But, if repairs are not to new car standards — for example, replacement of new parts with used ones, or the use of "filler" in the car body — such repairs would be a material fact and must be disclosed to potential buyers.

Terminology

1. New

A "new" motor vehicle is one which has not been sold *and* which has not been used for purposes other than may be incidental to testing or delivery.

"Sold" means a completed transaction between a dealer and a purchaser, but does not necessarily mean that the registration process has been completed.

"Sold" also includes a leasing agreement. ("Used" is defined below.)

When a vehicle is not "new," it should be clearly identified as either "used" or "demonstrator." This is especially important for vehicles which may otherwise appear "new" to a potential purchaser.

Customers buying a new car normally expect the mileage to be very low if not negligible. When a new vehicle has over 100 miles on the odometer, this fact should be pointed out to a prospective buyer along with the reasons for this mileage.

2. Demonstrator

A "demonstrator" is a vehicle which has been delivered *new* to a dealer, and used primarily for demonstration to the public by the dealer, and his salesmen.

3. Used

A "used" motor vehicle is one that is not a "demonstrator," and that has previously been driven on a public highway for purposes other than may be incidental to testing or delivery to a retail seller.

Any vehicles used by the dealer and his staff primarily for purposes other than demonstrations are simply "used" vehicles and cannot be described as "demonstrators." This would include parts trucks courtesy cars, lease cars, etc.

4. Other Terms

(a) Company Car, Executive Driven

"Company car" and "executive driven" should only be used to describe cars which have been used by executives or employees of auto manufacturers, distributors, or dealers, and not used for demonstration purposes.

In our view, consumers may still not have a clear understanding of these terms. For this reason, we recommend that when these terms are used, they be amplified to make it clear why this information is useful to the potential buyer.Such an amplification might be "executive driven - by an executive of this dealership." Another amplified example is "company car - driven by our manager."

(b) Rebuilt, Remanufactured

These two terms have specific meaning within the automotive industry.

A "rebuilt" engine is one which has been dissassembled and reconstructed with new or remanufactured parts. Assembly clearances are to the original manufacturer's specifications for that year and model.

The Automotive Industry has established the following "Standard Engine Rebuilding Specifications":

Engine to be disassembled, thoroughly cleaned, cylinder blocks and parts carefully inspected.
Rebuilding Operations: refinish cylinders; install new expansion plugs; regrind crankshaft; install new main bearings; align and bore main bearings; install new camshaft bearings; recondition valve seats, renew if necessary; recondition or replace defective connecting rods; install new pistons, pins, rings; install new valves, springs, guides, install new connecting rod bearings, install new timing gears or chain; install new oil pump or recondition old; recondition cylinder head; install new gaskets throughout.

(c) Reconditioned

A "reconditioned" engine is one which has been disassembled and reconstructed with repairs, or rebuilt parts installed where necessary. Such an engine is not a complete rebuild and must not be described as such.

Any other partial motor repair whether using new, reconditioned or used parts must only be described as "repaired."

5. Use of Terminology - Examples

(a) A car might be sold to a customer and returned for some reason within a few days. Even though the car still has very few miles on it - perhaps less than 100 miles - it has been "sold and used" and should not be represented as "new."

(b) A car might be sold to a customer on paper - all the registration forms completed, etc. Eut, if the customer changes his mind for some reason, and does not take delivery of the car, the car has not been "sold *and* used" and is still "new" by this definition.

(c) Another situation might occur where a car is driven 300 miles in delivery to a dealer in a remote location. Since the mileage occurred in delivery to the dealer, the dealer could sell the car as "new" as long as the mileage was pointed out to the potenial buyer.

(d) "Demonstrator" is defined as a car that has been used primarily for demonstration to the public. A car that has been used for a period by any person primarily for their personal use must not be sold as a "demonstrator." This means, for example, that the service manager's personal car may not be sold as a "demonstrator" but should be described as a "company car."

Prior History or Usage

It is deceptive under the Trade Practices Act to claim that a vehicle has had a particular prior history if it has not. In addition, what you *don't say may sometimes be misleading*. For example, if a vehicle has been used as a police cruiser, that prior usage would probably be a material fact. It would be misleading not to clearly disclose that prior usage to a potential buyer.

Dealers and salesmen can avoid problems in this area by accurately disclosing all details concerning a vehicle's history that might be considered "material."

For example, the following case resulted in the Ministry of Consumer & Corporate Affairs taking legal proceedings against a motor dealer. A salesman told a customer that a car was a demonstrator which would be covered by a new car warranty. In fact, the car never had been used as a demonstrator. The dealer had permitted a person to drive the vehicle for just over two months, had sold the vehicle, and then taken it back as a trade-in about three months later.

The legal proceedings ended with the dealer signing a voluntary agreement promising not to represent that a motor vehicle is a "demonstrator" if it has been previously *sold to* and *used by* any person.

In another instance, a dealer might offer an ex-rental car for sale. While the customer can examine the vehicle, its general condition and the odometer reading, the fact that the vehicle was used as a rental unit may not be evident from a physical examination. In this case, the prior history of the vehicle would have an effect on the buyer's decision and the price he would be willing to pay.

In the absence of any statements to the contrary the consumer might assume that the car was privately owned. Thus, even though no deliberate misleading statements were made, non-disclosure of important facts concerning the vehicle's prior usage would have the capability of deceiving a buyer.

Some other examples of prior history or usage that should always be disclosed include: police cruiser, taxis, racing cars, etc.

Condition of Vehicle

With respect to condition of a vehicle offered for sale, the Trade Practices Act requires a dealer to accurately disclose all "material facts" that exist at the time of the sale.

Dealers and sales personnel should be accurate and truthful when talking about a car's condition.

An example of a problem that has occurred in this area is as follows: In an advertisement and in a presentation, a dealer represented an automobile to be in excellent condition *when in fact the condition of the car was either unknown or known to be defective.*

The Ministry of Consumer & Corporate Affairs started legal proceedings against the dealer in this case. As a result, the dealer signed a voluntary agreement with the Director of Trade Practices. Under the terms of this agreement, the dealer agreed not to engage in similar practices in the future, to take back the automobile in question, and to refund the purchase price to the consumer.

Once again it is difficult to predetermine exactly what a court of law might consider to be a "material fact." In line with the answer suggested in General Section, **Presentation**, a defect that had a significant effect on the operating characteristics, safety or useful life of the car (and, as a consequence, on the customer's purchasing decision) might be considered to be a "material fact." Such material defects (facts) and their disclosure should be considered with regard to the age of the vehicle.

It is reasonable that just as a new car can be expected to meet certain standards of quality, used cars -

considering their age and the going market prices for similar automobiles - should also be expected to meet certain minimum standards of quality.

Any defect that is serious enough to affect a used vehicle's operating characteristics, safety or useful life should be disclosed prior to the sale.

For example, in 1974 the Director of Trade Practices took legal action of behalf of a consumer who, it was claimed, had been sold a vehicle without a functioning reverse gear. The case was settled out of court for an agreed total of $571 which was paid to the consumer.

A malfunctioning reverse gear would seriously affect a vehicle's operating characteristics. Such a defect would probably be considered "material" and should have been disclosed before the sale.

For obvious reasons, defects affecting a car's safe operation, would also be considered material and should also be disclosed before the sale.

Another example might be a car which for some reason needed major repairs such as a valve grind and new oil rings even thought it was only 2 years old and had 30,000 miles on it.

A repair of this nature might not normally be needed until 60,000 miles; under these circumstances, the car's useful life (with regard to its age) would be restricted. Such a defect should be disclosed prior to the sale.

A car that is very old and/or has very high mileage on it would already have its useful life restricted. Assuming such a car is functional and safe, the test for a "material defect" in such a car would probably be more lenient than the one applied to a new vehicle.

Note that "as is - where is" should not be used routinely in used car sales. See Contracts Section.

Year of Vehicle

A dealer is required by law to specify the model year of a motor vehicle being sold; and under the *Trade Practices Act* a dealer is responsible for the accuracy of the stated model year.

The dealer is usually the expert in such matters, and quite often a consumer may rely on what the dealer says. In our opinion, use of a disclaimer clause such as "the seller does not guarantee the year of the vehicle" does not relieve the dealer of his responsibility to accurately determine and disclose the car's model year.

Some vehicles, particularly recreational vehicles, motor homes, etc. may have a body with a different model year from the chassis. Since chassis' may change from year to year, dealers should be sure to point out any discrepancies and clearly identify the model and year of the chassis where this differs from the model year of the coach or body.

Repairs and Alterations

When a dealer makes repairs to a vehicle before offering it for sale, such repairs should not be of a temporary nature, but should be to acceptable industry standards and the car should be in reasonable condition having regard for its age and price.

Some repairs, such as replacement of the odometer, may not always be evident to the buyer of the car, and since they may be construed as "material facts," should be disclosed by the dealer.

In September, 1975 the Director of Trade Practices commenced a substitute action on behalf of a consumer who had purchased a pick-up truck with an odometer reading of 42,000 miles. The Director alleged that the

original odometer, showing approximately 82,000 miles, had been replaced prior to the sale and that the car dealer had failed to inform the consumer of this action.

The action was discontinued in May 1976 when the dealer refunded $1,000 to the consumer in an out-of-court settlement. The dealer also paid court costs of $350 and without acknowledging any breach of the Trade Practices Act, agreed not to engage in similar practices in future.

Where a contract for the sale of a vehicle is drawn up conditional upon repairs or alterations being completed:

— all repairs or alterations should be written into the contract (and a copy of the contract given to the customer);

— procedures should be set up within the dealership to ensure that any such conditions are agreed to by a person authorized to make such promises.

No alternations should be made to a vehicle after the sale is completed without the written consent of the purchaser.

Delivery Dates, Price Increases, Deposits

Customers are naturally disappointed when a car they have ordered has been delayed, or if there has been an unexpected change in price between the date the car was ordered and the date it is finally delivered. Dealers can avoid such problems by carefully defining delivery dates and the possibility of increased prices on vehicles not yet received in stock. When the dealer has some doubt about these facts, this uncertainty should be made explicit to the customer. Dealers and salesmen should avoid making promises that may not be kept.

When a deposit is taken in a vehicle transaction, the contract should state whether the deposit is refundable and under what conditions. When a dealer cannot deliver a car as promised, good business practice suggests that deposits should be returned to the customer. In such cases, the dealer should always offer to return the customer's deposit before suggesting that an alternative vehicle be purchased.

THE "CLOSER"

The "closer" is a term that loosely describes the activities that finish off the transaction - the car has been advertised, the salesman has given his presentation, and the customer has thought it over. This Section provides a brief look at some potential problems that might occur as the deal is being closed.

General

At this point in time, the salesman may have spent some time and effort to sell the car to the customer. Eager to close the deal, the salesman may naturally be tempted to apply some persuasion.

The customer may still be unsure that this is the car he wants and whether he can afford it.

This combination of eagerness and uncertainty may be aggravated where for some reason the customer is not fully able to protect his own interests in a bargaining situation. For example, a customer who is mentally infirm may not be able to understand the transaction. The same may be the case where the customer is very old, very young, ignorant or illiterate.

Section 3 of the Trade Practices Act outlines in general several "unconscionable practices." If a court declared a specific transaction unconscionable, the dealer could not enforce the transaction. An unenforceable transaction might, in an extreme example result in the customer being able to keep the car without making any further payments. Even if the dealer has assigned the finance contract to a credit company, unless the assignment was without recourse, the dealer might be responsible for that debt.

For these reasons, salesmen should take care that their customer understands the transaction and that the deal being closed is a fair one.

Pressure

The use of "undue pressure" is also unconscionable according to the Trade Practices Act.

For example, a consumer may agree to trade in his car at an acceptable price and make a deposit on a new vehicle. At a later point in time, the consumer may be informed that the vehicle of his choice is not available for some reason. Upon requesting cancellation, the consumer may be informed that he cannot get his deposit back and that his trade-in has been sold. The consumer is "locked-in" to a purchase and would be under pressure to make an alternate selection.

Another example of "undue pressure" might be where attempts are made to trade a customer "up" to a costlier car when a first car sold to him proves to be a "lemon" or unsuitable for the purpose for which the consumer bought it. In such a case, the customer may have no choice but to ask for a refund of the original purchase price or a replacement car. If the dealer only offers to provide the customer with a credit for the purchase of a costlier car, the customer would be under undue pressure to accept the offer and spend more money than he originally planned.

Overpricing

Another unconscionable practice prohibited by the Trade Practices Act is "gross overpricing." The fact that the buyer agrees to pay a certain price for an automobile does not necessarily determine the fairness of the transaction. If similar automobiles were generally available to the same consumer elsewhere at substantially lower prices, a court might consider overpricing to be an unconscionable practice. In such a case a dealer is prohibited from taking advantage of the buyer's lack of knowledge of the marketplace.

"Gross overpricing" may often only occur where there is some other factor which limits the customer's ability to strike a fair bargain.

For example, a customer from a rural area may come to the city to buy a car. Since he is only in town for the weekend, he may have only one Saturday in which to find the car he wants and close the deal.

In most cases, the customer's freedom to move about in the marketplace is adequate protection against overpricing. However, in this isolated example the customer may be so pressed for time that he may not be able to check going market prices for each car that he is interested in.

A salesman may be able to sell such a customer a car at a price well in excess of the going market price range for a car of that model, age and condition.

Had the customer known the going market prices better, he quite likely would not have signed the deal. In this case, the salesman may not only have taken advantage of the customer's ignorance of market prices, but also sold the car at a price which grossly exceeded the going market price.

Customer's Ability to Pay

Dealers should avoid situations where the customer will be unable to keep up his payments and may be unable to make full payment of the price.

Aside from the ability to pay, the dealer must attempt to consider other circumstances which are part of the terms of the transaction. The harshness or unfairness of the contract to which the consumer is bound is the guiding factor. If a court were to determine that the terms of the transaction "are so harsh or adverse to the consumer as to be inequitable," then that transaction would be unenforceable.

For example, it may be unwise to arrange 100% financing for a car if there is any doubt that the customer can carry the total monthly payments.

The bank or credit company involved in such deals is bound by the dealer's conduct. If a court ruled that an unconscionable practice had occurred, then the transaction, depending upon the type of credit arrangements, could be unenforceable.

Sales Made Subject to Financing

Where a transaction is subject to the customer obtaining financing, and where such financing is refused by regular sources of consumer credit (banks, trust companies, credit unions, etc.) because of lack of equity represented in the vehicle (vehicle being overpriced according to loan officers' guidelines) - refund of deposit should be made before any attempt is made to sell the consumer a different car.

No attempt should be made by the salesman or motor dealer to "trade up" the consumer to use up the deposit, nor should the salesman or motor dealer attempt to arrange financing through finance companies of *their* choice.

CONTRACTS

General

These general comments apply to all contracts that may be used in motor vehicle transactions. Certain contracts - conditional sales agreements, for example - have other specific requirements prescribed by law. Some of these requirements are discussed in the sections that follow.

Dealers and salesmen should ensure that documents are described properly and that the following steps are observed:

1. The dealer should describe the effect of documents as accurately as possible before they are signed. It may be deceptive to fail to state an important aspect of a document.

2. The dealer or salesman should take care that the consumer has the mental ability and command of the language to comprehend the meaning and effect of the document he is signing. When there is any question regarding the capabilities of the consumer, the dealer should only proceed with caution.

For example, if a consumer has an extremely limited knowledge of English, it would be a good idea to have an interpreter present.

3. The presentation counts - oral representations form part of the contract. To minimize misunderstandings all representations or promises should be written into the contract.

4. A customer should never be asked to sign a blank or partially blank contract.

5. A contract should always contain at least the following relevant information:

a. names and addresses of both seller and buyer;

b. serial number and description of the car;

c. year of car and mileage at time of sale;

d. the total price of the car, net cost to the customer, and a statement of the terms of payment;

e. statement of warranty conditions;

f. where credit is extended, the Consumer Protection Act should be checked for other specific requirements;

g. documentation charges (if any).

6. The customer should always be given a copy of any document after it is signed.

Order Form, Offer to Purchase, Interim Agreements

The first piece of documentation that is usually filled out in the course of a transaction is something which amounts to an offer to purchase. Two points should be made quite clear.

1. The consumer has the right to retract his offer at any time prior to the time the offer is formally accepted by the dealer. However, consumers should be advised that an offer to purchase is binding once it is accepted by the dealer.

2. Almost all car purchases involve optional extras and trade-ins. Consequently, there are always some additions to, and subtractions from the basic asking price before the full price difference is arrived at. This "full price difference" - including sales tax - should be filled in on the offer to purchase form before the consumer is asked to sign.

Credit

When the sale of a vehicle involves credit, the dealer should be familiar with the requirements of the Consumer Protection Act. Section II of the Act requires that the lender (which includes a seller) furnish the buyer before extending credit, a clear statement in writing showing:

—the base price of the vehicle

—any sum to be paid by the lender for official fees

—any sum to be paid by the lender for the cost of insurance

—the down payment or trade-in allowance

—the difference between the total amount borrowed and the down payment or trade-in allowance

—the cost of borrowing expressed in dollar terms

—the percentage that the cost of borrowing bears to the principal sum (expressed as an annual percentage rate calculated in the manner prescribed by regulation)

—the basis upon which additional charges are to be made in the event of default.

When credit is extended, the dealer should avoid over-committing the customer - this point is discussed in **The Closer** ("Customer's Ability to Pay").

Conditional Sales Agreements

A great many cars are sold by way of conditional sales agreements. Dealers using these agreements should be familiar with the Conditional Sales Act.

The effect of these agreements should be described to the potential buyer in advance. The following points may apply:

1. The customer should be told that depending on the terms of the agreement, he may not own the car until all the payments have been made.

2. While such agreements may resemble leases, or lease-purchase plans, such comparisons should not be made. The customer should always be told that he is buying a car if such is the case.

3. Where the conditional sales contract is not carried by the dealer but is to be assigned to a financial institution, this fact should be disclosed to the customer.

Lease and Lease-Purchase Plans

The following points should be disclosed to the customer and be written into the contract:

1. the minimum required term.

2. the down payment or deposit required if any.

3. the rights and obligations of the parties at the end of the term should be clearly disclosed - including the total balance owing if there is a purchase option.

4. responsibilities of both the dealer and the consumer with respect to servicing, repairs, licensing, registration, insurance and taxes.

All applicants for such plans should be informed of any restrictions which could cause their applications to be turned down.

Misleading Contract Clauses

Contracts should present the details of the transaction in an accurate manner. Care should be taken to ensure that the standard form contract does not mislead the consumer or attempt to take away a right that already exists. Three common examples of misleading contract clauses are as follows:

1. "As is - where is"

"As is - Where is" was originally designed to protect the seller from contractual and warranty obligations in respect to quality of goods sold. It was used to make it clear that there were no specific representations in writing regarding characteristics or quality of the product and also to avoid any implied warranties which might be imposed by the Sale of Goods Act.

However, under the Trade Practices Act, non-disclosure of a material fact is a deceptive act. The Act imposes a specific responsibility on the dealer to disclose any material defects which existed at the time of the transaction.

"As is - where is" should not be part of a standard form sales contract because, in our view, a consumer cannot agree (by signing a contract containing the phrase "as is - where is") to waive his rights, or the supplier's obligations to disclose material defects.

It follows that when a vehicle is sold, usually for a relatively low price, without any representations as to quality or condition, *this fact should be specifically and explicitly drawn to the attention of the customer.* Adequate notice might be given for example, by wording to this effect placed in a prominent position on the sales contract, in large letters (and/or letters printed in a different colour that clearly stand out from the rest of the agreement) and with a space for the customer to sign indicating that he has read and understood this disclosure notice.

Such a notice is suggested as a way of giving adequate disclosure to customers where a car is sold with *no representations as to quality or condition*, and would not absolve the dealer from responsibility where there were other deceptive representations as in the following example.

In a case taken by the Director of Trade Practices on behalf of two consumers, the Supreme Court of British Columbia decided in June, 1976 that *the use of an "as is - where is" clause in a sales contract did not protect a motor dealer where there were deceptive representations regarding a used vehicle.*

The details of the case are these: The consumers had purchased a used automobile from a car dealer only to have the car break down within five days, forcing replacement of the engine and transmission. The consumers had originally made it clear that they wanted a good running vehicle that would perform reliably on daily trips on the freeway. The car dealer assured them that the car would fulfill this purpose, and that he had had the car completely checked out by his mechanic who had made no adverse report on its condition.

After failing to get satisfaction or reasonable settlement from the dealer, the consumers took their claim to Small Claims Court where they were not successful.

With the consent of the consumers, the Director of Trade Practices commenced an appeal on their behalf.

The Supreme Court held that the consumers were entitled to recovery on the common law principle of "fundamental breach," that is, the seller's fundamental obligation to deliver an article reasonably fit for the buyer's disclosed purposes. *The Court found that the "as is - where is" and other exclusionary clauses used in the written contract were not effective to preclude recovery.*

In addition to this kind of recovery, the Court also held that the consumers were entitled to succeed on the basis of the B.C. Trade Practices Act. The Reasons for Judgment affirmed four important principles:

1. The Trade Practices Act gives rights to consumers which are independent of any contract which may purport to take these rights away.

2. The "as is - where is" and other exclusionary clauses contained in the contract do not "cure" any deceptive representations or bar relief under the Act.

3. Evidence regarding the verbal representations made by the supplier is admissible in court proceedings even where the terms of the contract purport to exclude such representations.

4. Intention to deceive is not necessary. A supplier can breach the Act even in cases where he honestly believes that misleading statements made by him are true. The test is whether the conduct of the supplier had the capability, tendency or effect of misleading, not whether it was intentionally designed to mislead.

2. Warranties

The Sale of Goods Act provides the consumer with an "implied warranty" with the purchase of any new goods. Any clause which attempts to limit the consumer's rights may not only be void pursuant to the Sale of Goods Act, but may also be a deceptive practice within the meaning of the Trade Practices Act.

For example, a contract might state that the manufacturer's new car warranty represents the entire liability of the manufacturer or seller to the purchaser. But, in law the purchaser also has the benefit of the implied warranty under the Sale of Goods Act and a representation that fails to recognize this fact may be deceptive under the terms of the Trade Practices Act.

3. Deficiency Balances

Under the Conditional Sales Act, if the buyer defaults on his payments, the debtor may either sue for the balance owing or reposses the goods (provided 2/3 or more of the price has not been paid) *but not both*. This means that, if a deficiency balance remains after an auto is seized and sold, the debtor is not responsible for payment. *A contract that tries to hold the purchaser responsible for such deficiency balances is misleading and cannot be used.*

Contracts and Consumer Legislation

There are four steps that a dealer might take to ensure that the contracts he is using meet all present legal requirements:

1. Review the contracts with a view to the comments in these guidelines.

2. Check with the Automobile Dealers' Association of B.C. or the Motor Dealers' Association of B.C. These associations supply their members with standard form contracts.

3. If the dealer does not belong to an association, or if he has a specific legal question, he should refer to his lawyer.

4. The Trade Liaison Division of the Ministry of Consumer & Corporate Affairs keeps the business community up-to-date on the present requirements of consumer legislation and will attempt to deal with any specific enquiries on this subject.

WARRANTIES

General

Where a warranty exists, full details should be disclosed making it clear whether responsibility is assumed by the dealer or the manufacturer, and which items remain the responsibility of the buyer. The following details should be provided to the buyer:

a. the identity of the warrantor

b. parts and/or labour covered

c. time or mileage limits

d. obligations of the buyer and the seller including conditions and restrictions

e. warranty claims procedures.

The buyer must receive his copy of the warranty.

New Cars

Every new car carries an implied warranty provided by the Sale of Goods Act which cannot be disclaimed. It is misleading to tell new car purchasers that their only rights with respect to warranties are those provided by the manufacturer.

For example, the manufacturer's warranty may not specifically cover windshield wiper blades, sealed beams, etc.

However, the Sale of Goods Act requires that for a reasonable time period, goods be reasonably fit for the purpose for which they are purchased. This means that a dealer cannot expect to avoid the responsibility of replacing such components when they are defective simply because they are not covered by the manufacturer's warranty.

In our opinion, the dealer's responsibility also extends to such other defects as water leaks around windows or trunk, malfunctioning power windows, and poor quality exterior or interior finish.

Demonstrator and late model used vehicles may carry the balance of the original new car warranty provided by the manufacturer, or may in the case of demonstrators, have the new car warranty extended beyond the normal period. In such cases, the dealer should accurately disclose before the sale, the specific time period and mileage which defines the limit of warranty coverage for that vehicle.

If a warranty is non-transferable, this fact must be disclosed to the buyer.

Extended Warranties

When a warranty is provided by someone other than the original manufacturer, as with so-called "extended warranty" plans, care should be taken to ensure that the customer is aware of the coverage he is receiving - *especially where this coverage differs significantly from that provided by the original manufacturer.*

Some specific guidelines for advertising extended warranties are set out in the Section on Advertising.

Vague Claims

Where a reference is made to "guarantees" or "warranties" or other terms implying protection against faults or breakdowns, the dealer should provide a full explanation of the plan including details of coverage and time period.

Similarly, it would be a deceptive practice to assert that a warranty is attached to a car where none exists, or to make vague statements that may or may not have substance such as "we stand behind our cars." As indicated in the "contracts" section, all promises should be explicitly stated in writing. To avoid misunderstandings, a warranty should be incorporated in a written document.